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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/724,816

12/01/2003

Thomas L. Clubb

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5558

9561 7590 03/09/2007  
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EXAMINER

MACNEILL, ELIZABETH

ART UNIT

PAPER NUMBER

3767

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/724,816

Applicant(s)

CLUBB, THOMAS L.

Examiner

Elizabeth R. MacNeill

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 January 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) 7-11, 28-32, 34, 37-41, 44, 54-58, 66-68, 70 and 72-75 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed. 30 39
- 6) ☒ Claim(s) 1-6, 12-29, 33, 35-38, 42, 43, 45-53, 59-65, 69, 71 and 72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see remarks, filed 12 January 2007, with respect to the rejection(s) of claim(s) 1-3,6,12-17,22,23,25,29,33,35-38,42,43,46-50,53,59-65,69,71 and 72 under Kusleika and/or Griffin have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Jang (US 4,958,634).

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6,12-29, 33, 35-38, 42, 43, 45-53, 59-65, 69, 71, and 72 are rejected under 35 U.S.C. 103(a) as being anticipated by Jang (US 4,958,634) in view of Pinchuk et al (US 4,946,466)

Jang teaches a catheter with a first elongate tubular body (40), a second elongate tubular body (80), a third elongate tubular body (guidewire disposed within lumen 60), and an elongate member (72, portion between the two balloons, see Fig 11). Jang does not teach that the third elongate tubular body has a lumen.

Pinchuk teaches the use of a hollow guidewire (120) and guidewire insert (27) with a balloon catheter (140), and a mechanical stop (26)

Art Unit: 3767

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the hollow guidewire of Pinchuk with the dual-balloon catheter of Jang in order to provide a catheter which can be used in a wide variety of vessels (wide or narrow).

As to claim 3,38 see Figure 11; claims 4-6, Figure 12; claim 12, Figure 13; claim 13, a portion of the second tubular body decreases/ is funnel shaped from the proximal end to the distal end, Fig 11; claims 15-17, proximal shaft 46; claims 18-28, Jang and Pinchuk teach the limitations of claim 1 as above, but are silent on the dimensions of the catheter. The Jang/Pinchuk catheter is designed to be used for the same purpose and in the same manner as the claimed invention (i.e. as catheter device inserted into the artery of a human patient) The application does not disclose any criticality for the dimensions claimed, but does disclose a variety of ranges throughout the specification, and in the applicant's background. It would have been an obvious matter of design choice to create a catheter with the claimed dimensions, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CPA 1955); claims 29 and 33, Fig 11; claim 35, Abstract;

### **Conclusion**

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Landymore (US 4,836,204); Bodden (US 5,069,662); Coyle (US 6,743,208).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth R. MacNeill whose telephone number is (571)-272-9970. The examiner can normally be reached on 7:00-3:30pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571)272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ERM

*Elizabeth MacNeill*  
3/1/07

KEVIN C. SIRMONS  
SUPERVISORY PATENT EXAMINER

*Kevin C. Sirmons*